VZCZCXRO7890
PP RUEHAO RUEHCD RUEHGA RUEHGD RUEHHA RUEHHO RUEHMC RUEHMT RUEHNG
RUEHNL RUEHQU RUEHRD RUEHRG RUEHRS RUEHTM RUEHVC
DE RUEHCV #0741/01 1632124
ZNY CCCCC ZZH
P 122124Z JUN 09
FM AMEMBASSY CARACAS
TO RUEHC/SECSTATE WASHDC PRIORITY 3191
INFO RUEHWH/WESTERN HEMISPHERIC AFFAIRS DIPL POSTS
RUCPDOC/DEPT OF COMMERCE
RUEATRS/DEPT OF TREASURY
RUMIAAA/HQ USSOUTHCOM MIAMI FL

C O N F I D E N T I A L SECTION 01 OF 03 CARACAS 000741

SIPDIS

HQ SOUTHCOM ALSO FOR POLAD
COMMERCE FOR 4332/MAC/WH/JLAO
TREASURY FOR RJARPE
NSC FOR RKING

E.O. 12958: DECL: 06/12/2019
TAGS: ECON PGOV PREL ETRD EINV VE
SUBJECT: VENEZUELA: WHAT TO EXPECT WHEN YOU ARE EXPECTING
NATIONALIZATION

REF: A. CARACAS 690
¶B. 2008 CARACAS 1393
¶C. CARACAS 592
¶D. CARACAS 644
¶E. CARACAS 725
¶F. CARACAS 433
¶G. 2008 CARACAS 1754

Classified By: Economic Counselor Darnall Steuart for reasons 1.4 (b) and (d).

¶1. (C) SUMMARY: The experience of Swiss cement company Holcim may offer insight into what U.S. companies with recently nationalized interests in Venezuela can expect from the Venezuelan government over the coming months. In the Holcim case, a model the Government of the Bolivarian Republic of Venezuela (GBRV) seems to be following with a few notable exceptions (Ref A), the GBRV claims repeatedly that it will pay, but under unacceptable conditions, which include a demand for a four-year payment period with no interest. As the months go by and the impact of government ownership becomes clear with a marked drop in productivity, many production statistics have simply disappeared. If the Holcim case study is any guide, U.S. companies have little to look forward to in their negotiations with the GBRV. END SUMMARY.

-- ----------
GBRV ONCE AGAIN CLAIMS IT WILL PAY, WITH A FEW CATCHES
-- ----------

¶2. (C) Former Holcim Venezuela Executive Director Louis Beauchemin (strictly protect throughout) told Econoff June 10 that he received a surprise phone call in late May from government-owned petroleum company, PDVSA, lead negotiator Eulogio Del Pino. After sporadic negotiations since August 2008 when the GBRV nationalized multinational cement companies Holcim, Lefarge and Cemex (Ref B), Del Pino told Beauchemin that the GBRV now "wants to come to an agreement quickly with both Lefarge and Holcim."

¶3. (C) During the conversation, Del Pino and Beauchemin agreed that the baseline for new negotiations would be the contract completed, but never signed, in September 2008. Beauchemin told Econoff that the September contract, negotiated shortly before the GBRV seemed to lose all interest in the cement industry, was balanced and one that Holcim could live with. During the call, Beauchemin reminded Del Pino that Holcim was no longer interested in retaining 15 percent of Holcim Venezuela, and instead wanted to sell 100 percent of the company to the GBRV. Del Pino agreed, and concluded the conversation saying he would have PDVSA's team

of lawyers update the September contract and forward it to Holcim the first week in June.

¶4. (C) Although the revised contract arrived on schedule, Beauchemin said, contrary to Del Pino's statements, the June 2009 contract had little in common with the September 2008 contract. It contained multiple new "deal breaking" provisions that further convinced Beauchemin that "Holcim will never get paid." Holcim's New York law firm sent PDVSA's New York law firm a letter of protest the first week in June, but had not received a response as of June 10. Beauchemin said he believes similar provisions are now in the GBRV template for all contracts it plans to negotiate with the growing list of nationalized companies (Refs C, D, E and F). He believes Argentine steel company Sidor agreed to something resembling the following "absurd" provisions in order to receive partial payment for its nationalized Venezuelan operations (Ref A).

I'D GLADLY PAY YOU TUESDAY.............

¶5. (C) The June 2009 GBRV-proposed contract stipulates that Holcim will receive 35 percent of the agreed sales price upon signature of the contract, but will be paid the remaining funds over the next four years with no interest on the outstanding amount. Beauchemin noted that even if Holcim believed the GBRV would actually make payments over four years, the "no interest" clause, which would cost Holcim millions, was particularly irritating as Holcim had conceded USD 40 million in dividends to the GBRV as a good-will gesture during previous negotiations. Beauchemin said that

if the GBRV had offered 50 percent up front with payment of the full amount (approximately USD 650 million after dropping the dividend claim) within the next 18 months, Holcim would have accepted rather than continue its costly international arbitration suit that will not have its first hearing until the end of 2010. Additionally, he emphasized, the provisions detailed below would have to be eliminated or substantially modified to reach an agreement.

¶6. (C) Beauchemin said the new contract goes on to specify that all issues related to Holcim Venezuela will henceforth fall under the jurisdiction of Venezuelan courts. The contract would force Holcim to withdraw its claim at the World Bank's International Center for Investment Disputes (ICSID) prior to the first GBRV payment and strip Holcim of its right to resort to the ICSID in the future. An additional clause states that any future environmental, "social," or labor claims the GBRV might choose to make would stop all GBRV payment until the issue is resolved to GBRV satisfaction in Venezuelan courts.

¶7. (C) In another interesting twist to the new contract, the GBRV removes all mention of PDVSA as the party responsible for making payment. Beauchemin said that Del Pino explained that while he could put PDVSA back on the new contract, it would still not make the payments as PDVSA is "overextended" and could not offer Holcim a dime. Instead, the contract lists the responsible party as a GBRV institute which falls under the authority of the new, Diosdado Cabello-led Ministry of Public Works and Housing (Ref G). (Note: Beauchemin could not recall the institute's name, but it may be the National Institute of Housing. End Note.) When Beauchemin asked Holcim lawyers why the Ministry itself was not listed as the payer, his legal counsel explained that if the GBRV listed a ministry as responsible for payment, when (not if) the GBRV defaults on the payments, the country itself would be considered to be in default. Counsel advised Beauchemin that the GBRV's many institutes, while wholly government owned and operated, are legally independent of the government and thus offer a fig leaf to hide behind when the GBRV defaults.

INDUSTRY PRODUCTION DATA DISAPPEARS

¶8. (C) Beauchemin understands from his industry contacts that Lefarge and Cemex are currently experiencing serious "technical difficulties" and that their production has dropped significantly. The only support for these claims is anecdotal evidence from former clients who tell him they cannot get enough product, as there is no longer any hard production data. The GBRV stopped updating its cement figures in December 2008. Most employees who would have been willing to share data informally with Beauchemin have left the country. Beauchemin added that the GBRV is currently paying Holcim USD 200,000 per month to keep Holcim from pulling the plug on its proprietary software, essential to plant operations. The GBRV is paying Cemex as well to keep the Cemex operating software running. Unfortunately for Lefarge, he said, which unlike the other two companies housed its servers and operating systems in Venezuela, the GBRV seized the Lefarge systems along with the rest of its operations.

COMMENT

¶9. (C) If the Holcim case study is any guide, U.S. companies in the agriculture and oil services sectors are in for difficult negotiations with the Venezuelan government. Beauchemin indicated that Stanford-educated lead PDVSA negotiator Del Pino is "very good" but "very overextended," as Beauchemin believes Del Pino is nearly the only person in the GBRV capable of handling complex negotiations with multinationals. Unfortunately, the list of negotiations Del Pino will have to conduct with nationalized companies is growing longer by the day. In fact, representatives from U.S. energy companies nationalized in the past month have reported to Post that Del Pino was unavailable to meet with them because he was traveling internationally in an attempt to raise money for PDVSA. If negotiations fail, the GBRV will place the blame squarely with the companies. As

Beauchemin pointed out, however, the GBRV might fool some in Venezuela, but "financial institutions and the international press will never buy it."

CAULFIELD